Supreme Court, U.S.
FILED

No. 001644 APR 27 2001

OFFICE OF THE CLERK

In the

Supreme Court of the United States

ALVIN F. LANGFELDT and MARY LANGFELDT,

Petitioners,

v.

GENESIS MEDICAL CENTER,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Iowa

PETITION FOR WRIT OF CERTIORARI

MARK F. CYR
Counsel of Record
THE LAW OFFICE OF
MARK F. CYR, P.C.
329 – 18th Street
Suite 300
Rock Island, Illinois 61201
(309) 786-0707
Attorney for Petitioners

Of Counsel:

MARTY DENIS
BARLOW, KOBATA & DENIS
220 South Riverside Plaza
Suite 1410
Chicago, Illinois 60606
(312) 648-5570

Midwest Law Printing Company/Photex — Chicago — (312) 321-0220

2699

QUESTION PRESENTED

1. Is a state law which is arbitrarily and capriciously applied in violation of settled principles of law and contrary to undisputed facts violative of due process and equal protection rights under the Fourteenth Amendment because it unlawfully denies access to the courts.

LIST OF PARTIES

The parties to this proceeding are Petitioners Alvin F. Langfeldt and Mary Langfeldt; and Respondent Genesis Medical Center.

TABLE OF CONTENTS

PAGE

QUESTIONS PRESENTED i

LIST OF PARTIES ii

TABLE OF CONTENTS iii

TABLE OF CITED AUTHORITIES iv

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 2

STATEMENT OF THE CASE 2

REASONS FOR GRANTING THE WRIT 4

CONCLUSION 6

Appendix A—Supreme Court Order ..... App. 1

Appendix B—Decision of the Court of Appeals of Iowa ..... App. 3

Appendix C—Opinion and Order of the Iowa District Court, Seventh Judicial District, Scott County ..... App. 8

Appendix D—Iowa Rule of Civil Procedure 49(f) ..... App. 13

Appendix E—U.S. Constitution, XIV Amendment ..... App. 14

TABLE OF CITED AUTHORITIES

Case Citations PAGE

Gentile v. State Bar of Nevada,
501 U.S. 1030 (1991) 4

Postal Telegraph Cable Co. v. Newport, Kentucky, 247 U.S. 464 (1918) 5

Segal v. Sacco, 136 Ill.2d 282 (1990) 4

Williams v. Tooke, 108 F.2d 758 (5th Cir.), *cert. den.*, 311 U.S. 655 (1940) 5

Constitutional Citations

U.S. Constitution,
Fourteenth Amendment . . . . . 2, App. 14

Statutory Citations

Illinois Supreme Court Rule 103(b) 4

Iowa Rule of Civil Procedure
49(f) . . . . . 2, 3, 4, 6, App. 13

Supreme Court Rule 13.1 1

28 U.S.C. § 1257(a) 1

28 U.S.C. § 2403(b) 1

PETITION FOR A WRIT OF CERTIORARI

Petitioners, Alvin F. Langfeldt and Mary Langfeldt (hereinafter "Langfeldts") respectfully pray for a Writ of Certiorari to the Iowa Supreme Court issue to review the judgment of the Iowa Supreme Court entered in this case on December 1, 2000.

OPINIONS BELOW

The unpublished Order of the Iowa Supreme Court rendered on December 1, 2000, is attached hereto as Appendix A. Prior thereto, the opinions in this case were the unpublished Decision of the Court of Appeals of Iowa, rendered on September 13, 2000, which is attached hereto as Appendix B; and the unpublished Opinion and Order of the Iowa District Court, Seventh Judicial District, Scott County, rendered on September 15, 1999, which is attached hereto as Appendix C.

JURISDICTION

The Judgment of the Iowa Supreme Court was entered on December 1, 2000. This Judgment is final for purposes of review by this Court. This Petition for Writ of Certiorari has been timely filed within ninety days thereafter (Supreme Court Rule 13.1). The jurisdiction of the Supreme Court is invoked under 28 U.S.C. § 1257(a).

Pursuant to the Proof of Service filed herewith, and pursuant to 28 U.S.C. § 2403(b), a copy of all documents shall be served upon the Attorney General for the State of Iowa. It is Petitioners' belief that the Court has not previously notified the Attorney General of the

State of Iowa that a constitutional question regarding Statute was drawn into question.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The relevant provisions of Iowa Rule of Civil Procedure 49(f) are set forth in Appendix D. Relevant provisions of the Fourteenth Amendment are also set forth in Appendix E.

STATEMENT OF THE CASE

Petitioners, residents of Davenport, Iowa, on the Mississippi River, sued in Iowa State Court for medical malpractice. Their malpractice claim involved emergency room admission and subsequent treatment due to a severe heart problem. Both Respondent and Dr. Collins, Petitioners' family cardiologist, were sued. Respondent's counsel participated in both cases. After a request to consolidate the cases was denied, the lawsuit against Respondent was dismissed without prejudice.

The lawsuit against Respondent was then refiled. Respondent's counsel acknowledged receipt of the second complaint. Service of the second complaint against Respondent was held in abeyance while Petitioners and Dr. Collins conducted mediation. The Dr. Collins mediation was successful. At each step, Respondent's counsel and Petitioners' counsel exchanged verbal and written communications about their ongoing mediation and settlement efforts. The parties' effort to mediate was unsuccessful. Then, Respondent, for the first time, raised the issue of Petitioners' compliance with Iowa

Rule of Civil Procedure 49(f). See Appendix D. Rule 49(f) requires service of the complaint within ninety (90) days. Rule 49(f) also directs the court to "direct an alternate time or manner of service" and, upon a showing of "good cause for the failure of service," allows the court to "extend the time for service for an appropriate period." In reviewing the Historical Notes/Comment section of Rule 49(f), the intention of this Rule is specifically set forth: ". . . Ninety days was chosen in order that service would be perfected prior to the issuance of scheduling orders by most courts . . . ." A scheduling order had not been issued in this matter and Respondent was informed of the scheduling hearing.

At the trial court level, the District Court (see Appendix C) found:

> Genesis (Respondent), its insurer, and its attorneys were aware of the Langfeldts' claims as a result of the first lawsuit.
>
> Its attorney was furnished a copy of the second lawsuit when it was filed. The court infers defendant and its insurer were able to timely investigate the claim and prepare its defense.

The District Court, nonetheless, dismissed Petitioners' lawsuit for failing to achieve service within the 90-day time limit. The District Court also held that the undisputed settlement negotiations were not "good cause" for extending the time for service.

The Court of Appeals of Iowa affirmed the District Court's Ruling on September 13, 2000. See Appendix B. The Court of Appeals rejected Petitioners' argument that the delay in service did not prejudice the Respondent, stating:

> The point is not whether Genesis suffered prejudice from the delay in service or whether the delay was intentional, but rather whether the Langfeldts can show justification for the delay. . . . We additionally note that notice of the possibility of a lawsuit is not sufficient; the party being sued must be served with an original notice as required by our rules of civil procedure. *Id.*

The Iowa Supreme Court affirmed the Ruling of the District Court on December 1, 2000.

REASONS FOR GRANTING THE WRIT

1. This case presents an important issue involving the administration of justice. Access to the courts is a fundamental right. *Gentile v. State Bar of Nevada*, 501 U.S. 1030 (1991). Although Rule 49(f) involves a state procedural rule, its application fundamentally affects the administration of justice in not only Iowa, but other states. Other states have similar procedural rules. *See e.g.*, Illinois Supreme Court Rule 103(b). It is unfair to apply state rules of procedure in an arbitrary manner. Doing so precludes citizens from access to the courts.

2. There is a conflict between the states in applying procedural rules similar to Rule 49(f). In *Segal v. Sacco*, 136 Ill.2d 282 (1990), the Illinois Supreme Court construed a similar rule and held that it was an abuse of discretion to dismiss a lawsuit because of a 19-week delay between filing a complaint and accomplishing service of process. Unlike the Iowa courts, the Illinois Supreme Court recognized the important societal values inherent in maintaining reasonable access to the judiciary to resolve disputes. Only this Court can clear up

the uncertainty that exists in the administration of justice. This case presents an appropriate vehicle for ending arbitrary state procedural rules that burden litigants in violation of the Fourteenth Amendment. *See,* point 4, *infra.*

3. Resolution of those issues will help preclude forum shopping. Petitioners live in Davenport, Iowa. Only the Mississippi River separates them from Illinois. A few hundred yards of the Mississippi River should not be the basis for denying them access to the courts. Had they lived in Illinois, the Illinois courts would not have tolerated the arbitrary action now imposed by the Iowa courts. The fortuity of residence should not be used as a predicate for imposing arbitrary rules. Actions by state courts involve state action no less than other state actions. So, too, the Equal Protection Clause requires that the fortuity of the Mississippi River not be used as a basis for denying access to the courts.

4. The decision below conflicts with this Court's decision in *Postal Telegraph Cable Co. v. Newport, Kentucky*, 247 U.S. 464 (1918). In *Postal Telegraph Cable Co.,* this Court established that, even in private litigation, courts may not arbitrarily and capriciously make decisions affecting the lawsuit's outcome in violation of settled principles of law and contrary to undisputed facts. To do so violates the Fourteenth Amendment's due process and equal protection clauses. *See Williams v. Tooke*, 108 F.2d 758, 759 (5th Cir.), *cert. den.*, 311 U.S. 655 (1940)

Here, the facts were undisputed. Respondent was involved in the initial lawsuit. Their counsel received the second lawsuit. Settlement negotiations were ongoing and successful in the related Dr. Collins matter. Peti-

tioners and Respondent tried to settle. The courts below arbitrarily ignored these undisputed facts. The courts below also arbitrarily ignored the mandatory language of Rule 49(f): "shall . . . direct an alternate time or manner of service." That language was not permissive or discretionary. The language says "shall . . . direct. . . ." The courts below arbitrarily ignored their own procedural rules. Doing so violated Petitioners' due process rights and conflicts with this Court's earlier decisions.

CONCLUSION

For all of the reasons stated, this petition for writ of certiorari should be granted.

Respectfully submitted,

MARK F. CYR
Counsel of Record
THE LAW OFFICE OF
MARK F. CYR, P.C.
329 – 18th Street
Suite 300
Rock Island, Illinois 61201
(309) 786-0707

Attorney for Petitioners

Of Counsel:

MARTY DENIS
BARLOW, KOBATA & DENIS
222 South Riverside Plaza
Suite 1410
Chicago, Illinois 60606
(312) 648-5570